

O'TOOLE SCRIVO

A LIMITED LIABILITY COMPANY

THOMAS P. SCRIVO
tscrivo@oslaw.com

August 21, 2023

VIA ECF

Hon. José R. Almonte, U.S.M.J.
U.S. District Court for the District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: *Pacira Pharmaceuticals, Inc. v. eVenus Pharmaceuticals Labs, Inc.*,
Civil Action No. 2:21-cv-19829-MCA-JRA (consolidated with 2:22-cv-718)**

Dear Judge Almonte:

We, along with Fish & Richardson P.C., Perkins Coie LLP and McCarter & English, LLP, represent Plaintiffs in this matter. On behalf of Plaintiffs, we submit this letter in response to the Court's August 14, 2023, Order (ECF No. 213), to update the Court as to whether the dispute underlying Defendants' motion to compel has been resolved in light of *In re Spalding Sports Worldwide, Inc.*, 203 F.3d 800 (Fed. Cir. 2000) ("*In re Spalding*"), on which Plaintiffs relied in opposing Defendants' motion.

Pursuant to the Court's Order, the parties met and conferred on August 17, 2023, but unfortunately, were not able to resolve the dispute. As a result, Defendants indicated their intent to supplement their briefing to address *In re Spalding*, pursuant to the Court's Order. Defendants provided Plaintiffs with a draft of their position on Friday evening, August 18th. In light of the length of Defendants' submission, and the new facts and arguments raised therein, Plaintiffs proposed a schedule to allow time both for Plaintiffs to respond to Defendants' submission and for the parties to file a joint letter. Instead of filing a joint letter to update the Court on the meet and confer, or negotiating a schedule for the parties to jointly submit their supplemental positions, Defendants instead filed their letter on their own behalf this evening without Plaintiffs' substantive response. Plaintiffs therefore request that their response to Defendants' new facts and arguments be filed no later than Thursday, August 24th.

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We appreciate Your Honor's attention to this matter.

Respectfully submitted,

/s/ Thomas P. Scrivo

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cc: All Counsel of Record (via ECF)